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HOUSE BILL 453

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

Richard P. Cheney

AN ACT

RELATING TO CRIMINAL LAW; REVISING THE ELEMENTS OF CRIMINAL  
SEXUAL CONTACT OF A MINOR IN THE SECOND DEGREE; INCREASING  
PENALTIES; PROVIDING CONFORMING AMENDMENTS; AMENDING SECTIONS  
OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 30-9-13 NMSA 1978 (being Laws 1975,  
Chapter 109, Section 4, as amended) is amended to read:

"30-9-13. CRIMINAL SEXUAL CONTACT OF A MINOR. --

A. Criminal sexual contact of a minor is the  
unlawful and intentional touching of or applying force to the  
intimate parts of a minor or the unlawful and intentional  
causing of a minor to touch one's intimate parts. For the  
purposes of this section, "intimate parts" means the primary  
genital area, groin, buttocks, anus or breast.

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1                   B. Criminal sexual contact of a minor in the second  
2 degree consists of all criminal sexual contact [~~of the~~  
3 ~~unclothed intimate parts~~] of a minor perpetrated:

4                   (1) on a child under thirteen years of age;  
5 [~~or~~]

6                   (2) on a child thirteen to eighteen years of  
7 age when [~~(a) the perpetrator is in a position of authority~~  
8 ~~over the child and uses that authority to coerce the child to~~  
9 ~~submit;~~

10                                   ~~(b) the perpetrator uses force or~~  
11 ~~coercion that results in personal injury to the child;~~

12                                   ~~(c) the perpetrator uses force or~~  
13 ~~coercion and is aided or abetted by one or more persons; or~~

14                                   ~~(d) the perpetrator is armed with a~~  
15 ~~deadly weapon] the perpetrator uses force or coercion; or~~

16                   (3) on a child thirteen to eighteen years of  
17 age when the perpetrator, who is a licensed school employee, an  
18 unlicensed school employee, a school contract employee, a  
19 school health service provider or a school volunteer, and who  
20 is at least eighteen years of age and is at least four years  
21 older than the child and not the spouse of that child, learns  
22 while performing services in or for a school that the child is  
23 a student in a school.

24                   Whoever commits criminal sexual contact of a minor in the  
25 second degree is guilty of a second degree felony for a sexual

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1 offense against a child and, notwithstanding the provisions of  
2 Section 31-18-15 NMSA 1978, shall be sentenced to a minimum  
3 term of imprisonment of three years, which shall not be  
4 suspended or deferred. The imposition of a minimum, mandatory  
5 term of imprisonment pursuant to the provisions of this  
6 subsection shall not be interpreted to preclude the imposition  
7 of sentencing enhancements pursuant to the provisions of  
8 Sections 31-18-17, 31-18-25 and 31-18-26 NMSA 1978.

9 ~~[C. Criminal sexual contact of a minor in the third~~  
10 ~~degree consists of all criminal sexual contact of a minor~~  
11 ~~perpetrated:-~~

12 ~~(1) on a child under thirteen years of age; or~~

13 ~~(2) on a child thirteen to eighteen years of~~  
14 ~~age when:-~~

15 ~~(a) the perpetrator is in a position of~~  
16 ~~authority over the child and uses this authority to coerce the~~  
17 ~~child to submit;~~

18 ~~(b) the perpetrator uses force or~~  
19 ~~coercion which results in personal injury to the child;~~

20 ~~(c) the perpetrator uses force or~~  
21 ~~coercion and is aided or abetted by one or more persons; or~~

22 ~~(d) the perpetrator is armed with a~~  
23 ~~deadly weapon.-~~

24 ~~Whoever commits criminal sexual contact of a minor in the~~  
25 ~~third degree is guilty of a third degree felony for a sexual~~

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1 ~~offense against a child.~~

2 ~~D. Criminal sexual contact of a minor in the fourth~~  
3 ~~degree consists of all criminal sexual contact:~~

4 ~~(1) not defined in Subsection C of this~~  
5 ~~section, of a child thirteen to eighteen years of age~~  
6 ~~perpetrated with force or coercion; or~~

7 ~~(2) of a minor perpetrated on a child thirteen~~  
8 ~~to eighteen years of age when the perpetrator, who is a~~  
9 ~~licensed school employee, an unlicensed school employee, a~~  
10 ~~school contract employee, a school health service provider or a~~  
11 ~~school volunteer, and who is at least eighteen years of age and~~  
12 ~~is at least four years older than the child and not the spouse~~  
13 ~~of that child, learns while performing services in or for a~~  
14 ~~school that the child is a student in a school.~~

15 ~~Whoever commits criminal sexual contact in the fourth~~  
16 ~~degree is guilty of a fourth degree felony.]"~~

17 Section 2. Section 29-11A-3 NMSA 1978 (being Laws 1995,  
18 Chapter 106, Section 3, as amended) is amended to read:

19 "29-11A-3. DEFINITIONS. -- As used in the Sex Offender  
20 Registration and Notification Act:

21 A. "sex offender" means a person eighteen years of  
22 age or older who:

23 (1) is a resident of New Mexico who is  
24 convicted of a sex offense in New Mexico;

25 (2) changes his residence to New Mexico, when

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1 that person has been convicted of a sex offense in another  
2 state pursuant to state, federal or military law;

3 (3) is a resident of New Mexico who is  
4 convicted of a sex offense pursuant to federal or military law;  
5 or

6 (4) is a resident of another state and who has  
7 been convicted of a sex offense pursuant to state, federal or  
8 military law, but who is:

9 (a) employed full time or part time in  
10 New Mexico for a period of time exceeding fourteen days or for  
11 an aggregate period of time exceeding thirty days during any  
12 calendar year; or

13 (b) enrolled on a full-time or part-time  
14 basis in a private or public school in New Mexico, including a  
15 secondary school, a trade school, a professional institution or  
16 an institution of higher education; and

17 B. "sex offense" means:

18 (1) criminal sexual penetration in the first,  
19 second, third or fourth degree, as provided in Section 30-9-11  
20 NMSA 1978;

21 (2) criminal sexual contact in the fourth  
22 degree, as provided in Section 30-9-12 NMSA 1978;

23 (3) criminal sexual contact of a minor in the  
24 second [~~third or fourth~~] degree, as provided in Section  
25 30-9-13 NMSA 1978;

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1 (4) sexual exploitation of children, as  
2 provided in Section 30-6A-3 NMSA 1978;

3 (5) sexual exploitation of children by  
4 prostitution, as provided in Section 30-6A-4 NMSA 1978;

5 (6) kidnapping, as provided in Section  
6 30-4-1 NMSA 1978, when the victim is less than eighteen years  
7 of age and the offender is not a parent of the victim;

8 (7) false imprisonment, as provided in Section  
9 30-4-3 NMSA 1978, when the victim is less than eighteen years  
10 of age and the offender is not a parent of the victim;

11 (8) solicitation to commit criminal sexual  
12 contact of a minor in the second, third or fourth degree, as  
13 provided in Sections 30-9-13 and 30-28-3 NMSA 1978; or

14 (9) attempt to commit any of the sex offenses  
15 set forth in Paragraphs (1) through (7) of this subsection, as  
16 provided in Section 30-28-1 NMSA 1978. "

17 Section 3. Section 29-11A-5 NMSA 1978 (being Laws 1995,  
18 Chapter 106, Section 5, as amended) is amended to read:

19 "29-11A-5. LOCAL REGISTRY--CENTRAL REGISTRY--  
20 ADMINISTRATION BY DEPARTMENT OF PUBLIC SAFETY--PARTICIPATION IN  
21 THE NATIONAL SEX OFFENDER REGISTRY--RULES. --

22 A. A county sheriff shall maintain a local registry  
23 of sex offenders in his jurisdiction required to register  
24 pursuant to the provisions of the Sex Offender Registration and  
25 Notification Act.

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1           B. The county sheriff shall forward registration  
2 information obtained from sex offenders to the department of  
3 public safety. The initial registration information and any  
4 new registration information subsequently obtained from a sex  
5 offender shall be forwarded by the county sheriff no later than  
6 ten working days after the information is obtained from a sex  
7 offender. If the department of public safety receives  
8 information regarding a sex offender from a governmental entity  
9 other than a county sheriff, the department shall send that  
10 information to the sheriff for the county in which the sex  
11 offender resides.

12           C. The department of public safety shall maintain a  
13 central registry of sex offenders required to register pursuant  
14 to the provisions of the Sex Offender Registration and  
15 Notification Act. The department shall participate in the  
16 national sex offender registry administered by the United  
17 States department of justice. The department shall send  
18 conviction information and fingerprints for all sex offenders  
19 registered in New Mexico to the national sex offender registry  
20 administered by the United States department of justice and to  
21 the federal bureau of investigation.

22           D. The department of public safety shall retain  
23 registration information regarding sex offenders convicted for  
24 the following sex offenses for a period of twenty years  
25 following the sex offender's conviction, release from prison or

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1 release from probation or parole, whichever occurs later:

2 (1) criminal sexual penetration in the first  
3 or second degree, as provided in Section 30-9-11 NMSA 1978;

4 (2) criminal sexual contact of a minor in the  
5 second [~~or third~~] degree, as provided in Section 30-9-13 NMSA  
6 1978;

7 (3) sexual exploitation of children, as  
8 provided in Section 30-6A-3 NMSA 1978;

9 (4) kidnapping, as provided in Section 30-4-1  
10 NMSA 1978, when the victim is less than eighteen years of age  
11 and the offender is not a parent of the victim; or

12 (5) attempt to commit any of the sex offenses  
13 set forth in Paragraphs (1) through (4) of this subsection, as  
14 provided in Section 30-28-1 NMSA 1978.

15 E. The department of public safety shall retain  
16 registration information regarding sex offenders convicted for  
17 the following offenses for a period of ten years following the  
18 sex offender's conviction, release from prison or release from  
19 probation or parole, whichever occurs later:

20 (1) criminal sexual penetration in the third  
21 or fourth degree, as provided in Section 30-9-11 NMSA 1978;

22 (2) criminal sexual contact in the fourth  
23 degree, as provided in Section 30-9-12 NMSA 1978;

24 [~~(3) criminal sexual contact of a minor in the~~  
25 ~~fourth degree, as provided in Section 30-9-13 NMSA 1978;~~

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1                   ~~(4)~~ (3) sexual exploitation of children by  
2 prostitution, as provided in Section 30-6A-4 NMSA 1978;

3                   ~~(5)~~ (4) false imprisonment, as provided in  
4 Section 30-4-3 NMSA 1978, when the victim is less than eighteen  
5 years of age and the offender is not a parent of the victim;

6                   ~~(6)~~ (5) solicitation to commit criminal  
7 sexual contact of a minor in the second, third or fourth  
8 degree, as provided in Sections 30-9-13 and 30-28-3 NMSA 1978;  
9 or

10                   ~~(7)~~ (6) attempt to commit any of the sex  
11 offenses set forth in Paragraphs (1) through ~~(5)~~ (4) of this  
12 subsection, as provided in Section 30-28-1 NMSA 1978.

13                   F. The department of public safety shall adopt  
14 rules necessary to carry out the provisions of the Sex Offender  
15 Registration and Notification Act. "

16                   Section 4. Section 29-11A-5.1 NMSA 1978 (being Laws 1999,  
17 Chapter 19, Section 8, as amended) is amended to read:

18                   "29-11A-5.1. PUBLIC ACCESS TO INFORMATION REGARDING  
19 CERTAIN REGISTERED SEX OFFENDERS--ACTIVE COMMUNITY  
20 NOTIFICATION--INTERNET WEB SITE. --

21                   A. If a sex offender is convicted of one of the  
22 following sex offenses, the county sheriff shall forward  
23 registration information obtained from the sex offender to the  
24 district attorney for the judicial district in which the sex  
25 offender resides and, if the sex offender is a resident of a

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1 municipality, the chief law enforcement officer for the  
2 municipality in which the sex offender resides:

3 (1) criminal sexual penetration in the first  
4 or second degree, as provided in Section 30-9-11 NMSA 1978;

5 (2) criminal sexual contact of a minor in the  
6 second [~~third or fourth~~] degree, as provided in  
7 Section 30-9-13 NMSA 1978;

8 (3) sexual exploitation of children, as  
9 provided in Section 30-6A-3 NMSA 1978;

10 (4) sexual exploitation of children by  
11 prostitution, as provided in Section 30-6A-4 NMSA 1978; or

12 (5) attempt to commit any of the sex offenses  
13 set forth in Paragraphs (1) through (4) of this subsection, as  
14 provided in Section 30-28-1 NMSA 1978.

15 B. A person who wants to obtain registration  
16 information regarding sex offenders described in Subsection A  
17 of this section may request that information from the:

18 (1) sheriff for the county in which the sex  
19 offenders reside;

20 (2) chief law enforcement officer for the  
21 municipality in which the sex offenders reside;

22 (3) district attorney for the judicial  
23 district in which the sex offenders reside; or

24 (4) secretary of public safety.

25 C. Upon receiving a request for registration

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1 information regarding sex offenders described in Subsection A  
2 of this section, the county sheriff, chief municipal law  
3 enforcement officer, district attorney or secretary of public  
4 safety shall provide that registration information, with the  
5 exception of a sex offender's social security number, within a  
6 reasonable period of time, and no later than seven days after  
7 receiving the request.

8 D. Within seven days of receiving registration  
9 information from a sex offender described in Subsection A of  
10 this section, the county sheriff shall contact every licensed  
11 daycare center, elementary school, middle school and high  
12 school within a one-mile radius of the sex offender's residence  
13 and provide them with the sex offender's registration  
14 information, with the exception of the sex offender's social  
15 security number.

16 E. The department of public safety may establish  
17 and manage an internet web site that provides the public with  
18 registration information regarding sex offenders described in  
19 Subsection A of this section. The registration information  
20 provided to the public pursuant to this subsection shall not  
21 include a sex offender's social security number or a sex  
22 offender's place of employment, unless the sex offender's  
23 employment requires him to have direct contact with children. "

24 Section 5. Section 31-20-5.2 NMSA 1978 (being Laws 2003  
25 (1st S.S.), Chapter 1, Section 7) is amended to read:

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1 "31-20-5.2. SEX OFFENDERS--PERIOD OF PROBATION--TERMS AND  
2 CONDITIONS OF PROBATION. --

3 A. When a district court defers imposition of a  
4 sentence for a sex offender, or suspends all or any portion of  
5 a sentence for a sex offender, the district court shall include  
6 a provision in the judgment and sentence that specifically  
7 requires the sex offender to serve an indeterminate period of  
8 supervised probation for a period of not less than five years  
9 and not in excess of twenty years. A sex offender's period of  
10 supervised probation may be for a period of less than twenty  
11 years if, at a review hearing provided for in Subsection B of  
12 this section, the state is unable to prove that the sex  
13 offender should remain on probation. Prior to placing a sex  
14 offender on probation, the district court shall conduct a  
15 hearing to determine the terms and conditions of supervised  
16 probation for the sex offender. The district court may  
17 consider any relevant factors, including:

18 (1) the nature and circumstances of the  
19 offense for which the sex offender was convicted or  
20 adjudicated;

21 (2) the nature and circumstances of a prior  
22 sex offense committed by the sex offender;

23 (3) rehabilitation efforts engaged in by the  
24 sex offender, including participation in treatment programs  
25 while incarcerated or elsewhere;

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1 (4) the danger to the community posed by the  
2 sex offender; and

3 (5) a risk and needs assessment regarding the  
4 sex offender, developed by the sex offender management board of  
5 the New Mexico sentencing commission or another appropriate  
6 entity, to be used by appropriate district court personnel.

7 B. A district court shall review the terms and  
8 conditions of a sex offender's supervised probation at two and  
9 one-half year intervals. When a sex offender has served the  
10 initial five years of supervised probation, the district court  
11 shall also review the duration of the sex offender's supervised  
12 probation at two and one-half year intervals. When a sex  
13 offender has served the initial five years of supervised  
14 probation, at each review hearing the state shall bear the  
15 burden of proving to a reasonable certainty that the sex  
16 offender should remain on probation.

17 C. The district court may order a sex offender  
18 placed on probation to abide by reasonable terms and conditions  
19 of probation, including:

20 (1) being subject to intensive supervision by  
21 a probation officer of the corrections department;

22 (2) participating in an outpatient or  
23 inpatient sex offender treatment program;

24 (3) a probationary agreement by the sex  
25 offender not to use alcohol or drugs;

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1 (4) a probationary agreement by the sex  
2 offender not to have contact with certain persons or classes of  
3 persons; and

4 (5) being subject to alcohol testing, drug  
5 testing or polygraph examinations used to determine if the sex  
6 offender is in compliance with the terms and conditions of his  
7 probation.

8 D. The district court shall notify the sex  
9 offender's counsel of record of an upcoming probation hearing  
10 for a sex offender, and the sex offender's counsel of record  
11 shall represent the sex offender at the probation hearing.  
12 When a sex offender's counsel of record provides the court with  
13 good cause that the counsel of record should not represent the  
14 sex offender at the probation hearing and the sex offender is  
15 subsequently unable to obtain counsel, the district court shall  
16 notify the chief public defender of the upcoming probation  
17 hearing and the chief public defender shall make representation  
18 available to the sex offender at that hearing.

19 E. If the district court finds that a sex offender  
20 has violated the terms and conditions of his probation, the  
21 district court may revoke his probation or may order additional  
22 terms and conditions of probation.

23 F. As used in this section, "sex offender" means a  
24 person who is convicted of, pleads guilty to or pleads nolo  
25 contendere to any one of the following offenses:

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1 (1) kidnapping, as provided in  
2 Section 30-4-1 NMSA 1978, when committed with intent to inflict  
3 a sexual offense upon the victim;

4 (2) criminal sexual penetration in the first,  
5 second or third degree, as provided in Section 30-9-11 NMSA  
6 1978;

7 (3) criminal sexual contact of a minor in the  
8 second [~~or third~~] degree, as provided in Section 30-9-13 NMSA  
9 1978;

10 (4) sexual exploitation of children in the  
11 second degree, as provided in Section 30-6A-3 NMSA 1978; or

12 (5) sexual exploitation of children by  
13 prostitution in the first or second degree, as provided in  
14 Section 30-6A-4 NMSA 1978. "

15 Section 6. Section 31-21-10.1 NMSA 1978 (being Laws 2003  
16 (1st S.S.), Chapter 1, Section 9) is amended to read:

17 "31-21-10.1. SEX OFFENDERS--PERIOD OF PAROLE--TERMS AND  
18 CONDITIONS OF PAROLE.--

19 A. If the district court sentences a sex offender  
20 to a term of incarceration in a facility designated by the  
21 corrections department, the district court shall include a  
22 provision in the judgment and sentence that specifically  
23 requires the sex offender to serve an indeterminate period of  
24 supervised parole for a period of not less than five years and  
25 not in excess of twenty years. A sex offender's period of

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1 supervised parole may be for a period of less than twenty years  
2 if, at a review hearing provided for in Subsection B of this  
3 section, the state is unable to prove that the sex offender  
4 should remain on parole. Prior to placing a sex offender on  
5 parole, the board shall conduct a hearing to determine the  
6 terms and conditions of supervised parole for the sex offender.  
7 The board may consider any relevant factors, including:

8 (1) the nature and circumstances of the  
9 offense for which the sex offender was incarcerated;

10 (2) the nature and circumstances of a prior  
11 sex offense committed by the sex offender;

12 (3) rehabilitation efforts engaged in by the  
13 sex offender, including participation in treatment programs  
14 while incarcerated or elsewhere;

15 (4) the danger to the community posed by the  
16 sex offender; and

17 (5) a risk and needs assessment regarding the  
18 sex offender, developed by the sex offender management board of  
19 the New Mexico sentencing commission or another appropriate  
20 entity, to be used by appropriate parole board personnel.

21 B. The board shall review the terms and conditions  
22 of a sex offender's supervised parole at two and one-half year  
23 intervals. When a sex offender has served the initial five  
24 years of supervised parole, the board shall also review the  
25 duration of the sex offender's supervised parole at two and

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1 one-half year intervals. When a sex offender has served the  
2 initial five years of supervised parole, at each review hearing  
3 the state shall bear the burden of proving to a reasonable  
4 certainty that the sex offender should remain on parole.

5 C. The board may order a sex offender released on  
6 parole to abide by reasonable terms and conditions of parole,  
7 including:

8 (1) being subject to intensive supervision by  
9 a parole officer of the corrections department;

10 (2) participating in an outpatient or  
11 inpatient sex offender treatment program;

12 (3) a parole agreement by the sex offender not  
13 to use alcohol or drugs;

14 (4) a parole agreement by the sex offender not  
15 to have contact with certain persons or classes of persons; and

16 (5) being subject to alcohol testing, drug  
17 testing or polygraph examinations used to determine if the sex  
18 offender is in compliance with the terms and conditions of his  
19 parole.

20 D. The board shall notify the chief public defender  
21 of an upcoming parole hearing for a sex offender, and the chief  
22 public defender shall make representation available to the sex  
23 offender at the parole hearing.

24 E. If the board finds that a sex offender has  
25 violated the terms and conditions of his parole, the board may

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1 revoke his parole or may order additional terms and conditions  
2 of parole.

3 F. The provisions of this section shall apply to  
4 all sex offenders, except geriatric, permanently incapacitated  
5 and terminally ill inmates eligible for the medical and  
6 geriatric parole program as provided by the Parole Board Act.

7 G. As used in this section, "sex offender" means a  
8 person who is convicted of, pleads guilty to or pleads nolo  
9 contendere to any one of the following offenses:

10 (1) kidnapping, as provided in  
11 Section 30-4-1 NMSA 1978, when committed with intent to inflict  
12 a sexual offense upon the victim;

13 (2) criminal sexual penetration in the first,  
14 second or third degree, as provided in Section 30-9-11 NMSA  
15 1978;

16 (3) criminal sexual contact of a minor in the  
17 second [~~or third~~] degree, as provided in Section 30-9-13 NMSA  
18 1978;

19 (4) sexual exploitation of children in the  
20 second degree, as provided in Section 30-6A-3 NMSA 1978; or

21 (5) sexual exploitation of children by  
22 prostitution in the first or second degree, as provided in  
23 Section 30-6A-4 NMSA 1978. "

24 Section 7. Section 33-2-34 NMSA 1978 (being Laws 1999,  
25 Chapter 238, Section 1, as amended) is amended to read:

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1 "33-2-34. ELIGIBILITY FOR EARNED MERITORIOUS

2 DEDUCTIONS. --

3 A. To earn meritorious deductions, a prisoner  
4 confined in a correctional facility designated by the  
5 corrections department must be an active participant in  
6 programs recommended for the prisoner by the classification  
7 committee and approved by the warden. Meritorious deductions  
8 shall not exceed the following amounts:

9 (1) for a prisoner confined for committing a  
10 serious violent offense, up to a maximum of four days per month  
11 of time served;

12 (2) for a prisoner confined for committing a  
13 nonviolent offense, up to a maximum of thirty days per month of  
14 time served;

15 (3) for a prisoner confined following  
16 revocation of parole for the alleged commission of a new felony  
17 offense or for absconding from parole, up to a maximum of four  
18 days per month of time served during the parole term following  
19 revocation; and

20 (4) for a prisoner confined following  
21 revocation of parole for a reason other than the alleged  
22 commission of a new felony offense or absconding from parole,  
23 up to a maximum of eight days per month of time served during  
24 the parole term following revocation.

25 B. A prisoner may earn meritorious deductions upon

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1 recommendation by the classification committee, based upon the  
2 prisoner's active participation in approved programs and the  
3 quality of the prisoner's participation in those approved  
4 programs. A prisoner may not earn meritorious deductions  
5 unless the recommendation of the classification committee is  
6 approved by the warden.

7 C. If a prisoner's active participation in approved  
8 programs is interrupted by a lockdown at a correctional  
9 facility, he may continue to be awarded meritorious deductions  
10 at the rate he was earning meritorious deductions prior to the  
11 lockdown, unless the warden determines that the prisoner's  
12 conduct contributed to the initiation or continuance of the  
13 lockdown.

14 D. A prisoner confined in a correctional facility  
15 designated by the corrections department is eligible for lump-  
16 sum meritorious deductions as follows:

17 (1) for successfully completing an approved  
18 vocational, substance abuse or mental health program, one  
19 month; except when the prisoner has a demonstrable physical,  
20 mental health or developmental disability that prevents the  
21 prisoner from successfully earning a general education diploma,  
22 in which case, the prisoner shall be awarded three months;

23 (2) for earning a general education diploma,  
24 three months;

25 (3) for earning an associate's degree, four

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1 months;

2 (4) for earning a bachelor's degree, five  
3 months;

4 (5) for earning a graduate qualification, five  
5 months; and

6 (6) for engaging in a heroic act of saving  
7 life or property, engaging in extraordinary conduct for the  
8 benefit of the state or the public that is at great expense,  
9 risk or effort on behalf of the inmate, or engaging in  
10 extraordinary conduct far in excess of normal program  
11 assignments that demonstrates the prisoner's commitment to  
12 rehabilitate himself. The classification committee and the  
13 warden may recommend the number of days to be awarded in each  
14 case based upon the particular merits, but any award shall be  
15 determined by the director of the adult institutions division  
16 of the corrections department.

17 E. Lump-sum meritorious deductions, provided in  
18 Paragraphs (1) through (6) of Subsection D of this section, may  
19 be awarded in addition to the meritorious deductions provided  
20 in Subsections A and B of this section. Lump-sum meritorious  
21 deductions shall not exceed one year per award and shall not  
22 exceed a total of one year for all lump-sum meritorious  
23 deductions awarded in any consecutive twelve-month period.

24 F. A prisoner is not eligible to earn meritorious  
25 deductions if the prisoner:

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1 (1) disobeys an order to perform labor,  
2 pursuant to Section 33-8-4 NMSA 1978;

3 (2) is in disciplinary segregation;

4 (3) is within the first sixty days of receipt  
5 by the corrections department; or

6 (4) is not an active participant in programs  
7 recommended and approved for him by the classification  
8 committee.

9 G. The provisions of this section shall not be  
10 interpreted as providing eligibility to earn meritorious  
11 deductions from a sentence of life imprisonment or a sentence  
12 of death.

13 H. The corrections department shall promulgate  
14 rules to implement the provisions of this section, and the  
15 rules shall be matters of public record. A concise summary of  
16 the rules shall be provided to each prisoner, and each prisoner  
17 shall receive a quarterly statement of the meritorious  
18 deductions earned.

19 I. A New Mexico prisoner confined in a federal or  
20 out-of-state correctional facility is eligible to earn  
21 meritorious deductions for active participation in programs on  
22 the basis of the prisoner's conduct and program reports  
23 furnished by that facility to the corrections department. All  
24 decisions regarding the award and forfeiture of meritorious  
25 deductions at such facility are subject to final approval by

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1 the director of the adult institutions division of the  
2 corrections department or the director's designee.

3 J. In order to be eligible for meritorious  
4 deductions, a prisoner confined in a federal or out-of-state  
5 correctional facility designated by the corrections department  
6 must actively participate in programs that are available. If a  
7 federal or out-of-state correctional facility does not have  
8 programs available for a prisoner, the prisoner may be awarded  
9 meritorious deductions at the rate the prisoner could have  
10 earned meritorious deductions if the prisoner had actively  
11 participated in programs.

12 K. A prisoner confined in a correctional facility  
13 in New Mexico that is operated by a private company, pursuant  
14 to a contract with the corrections department, is eligible to  
15 earn meritorious deductions in the same manner as a prisoner  
16 confined in state-run correctional facilities. All decisions  
17 regarding the award or forfeiture of meritorious deductions at  
18 such facilities are subject to final approval by the director  
19 of the adult institutions division of the corrections  
20 department or the director's designee.

21 L. As used in this section:

22 (1) "active participant" means a prisoner who  
23 has begun, and is regularly engaged in, approved programs;

24 (2) "program" means work, vocational,  
25 educational, substance abuse and mental health programs,

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1 approved by the classification committee, that contribute to a  
2 prisoner's self-betterment through the development of personal  
3 and occupational skills. "Program" does not include  
4 recreational activities;

5 (3) "nonviolent offense" means any offense  
6 other than a serious violent offense; and

7 (4) "serious violent offense" means:

8 (a) second degree murder, as provided in  
9 Section 30-2-1 NMSA 1978;

10 (b) voluntary manslaughter, as provided  
11 in Section 30-2-3 NMSA 1978;

12 (c) third degree aggravated battery, as  
13 provided in Section 30-3-5 NMSA 1978;

14 (d) first degree kidnapping, as provided  
15 in Section 30-4-1 NMSA 1978;

16 (e) first and second degree criminal  
17 sexual penetration, as provided in Section 30-9-11 NMSA 1978;

18 (f) second [~~and-third~~] degree criminal  
19 sexual contact of a minor, as provided in Section 30-9-13 NMSA  
20 1978;

21 (g) first and second degree robbery, as  
22 provided in Section 30-16-2 NMSA 1978;

23 (h) second degree aggravated arson, as  
24 provided in Section 30-17-6 NMSA 1978;

25 (i) shooting at a dwelling or occupied

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1 building, as provided in Section 30-3-8 NMSA 1978;

2 (j) shooting at or from a motor vehicle,  
3 as provided in Section 30-3-8 NMSA 1978;

4 (k) aggravated battery upon a peace  
5 officer, as provided in Section 30-22-25 NMSA 1978;

6 (l) assault with intent to commit a  
7 violent felony upon a peace officer, as provided in Section  
8 30-22-23 NMSA 1978;

9 (m) aggravated assault upon a peace  
10 officer, as provided in Section 30-22-22 NMSA 1978; and

11 (n) any of the following offenses, when  
12 the nature of the offense and the resulting harm are such that  
13 the court judges the crime to be a serious violent offense for  
14 the purpose of this section: 1) involuntary manslaughter, as  
15 provided in Section 30-2-3 NMSA 1978; 2) fourth degree  
16 aggravated assault, as provided in Section 30-3-2 NMSA 1978; 3)  
17 third degree assault with intent to commit a violent felony, as  
18 provided in Section 30-3-3 NMSA 1978; 4) third and fourth  
19 degree aggravated stalking, as provided in Section  
20 30-3A-3.1 NMSA 1978; 5) second degree kidnapping, as provided  
21 in Section 30-4-1 NMSA 1978; 6) second degree abandonment of a  
22 child, as provided in Section 30-6-1 NMSA 1978; 7) first,  
23 second and third degree abuse of a child, as provided in  
24 Section 30-6-1 NMSA 1978; 8) third degree dangerous use of  
25 explosives, as provided in Section 30-7-5 NMSA 1978; 9) third

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1 and fourth degree criminal sexual penetration, as provided in  
2 Section 30-9-11 NMSA 1978; [~~10~~] ~~fourth degree criminal sexual~~  
3 ~~contact of a minor, as provided in Section 30-9-13 NMSA 1978;~~  
4 ~~11~~] 10) third degree robbery, as provided in Section 30-16-2  
5 NMSA 1978; [~~12~~] 11) third degree homicide by vehicle or great  
6 bodily injury by vehicle, as provided in Section 66-8-101 NMSA  
7 1978; and [~~13~~] 12) battery upon a peace officer, as provided  
8 in Section 30-22-24 NMSA 1978. "

9 Section 8. EFFECTIVE DATE. --The effective date of the  
10 provisions of this act is July 1, 2004.

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